



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

HD:hd
Docket No: 08436-01
31 January 2002

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: LT [REDACTED] USN [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 5 Dec 01 w/attachments
(2) NPC P801C memo dtd 15 Jan 02
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing only his failure of selection before the Fiscal Year (FY) 02 Line Lieutenant Commander Selection Board. Because of his two failures of selection for promotion, by the FY 01 and 02 Line Lieutenant Commander Selection Boards, he is scheduled to be involuntarily discharged on 1 March 2002.
2. The Board, consisting of Messrs. Chapman and Kim and Ms. Nofziger, reviewed Petitioner's allegations of error and injustice on 31 January 2002, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.
3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:
 - a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.
 - b. After Petitioner's FY 01 failure, which he does not contest, his then current commanding officer set aside his nonjudicial punishment (NJP) of 15 November 1996. Consequently, Petitioner submitted his previous application to this Board (docket number 1664-01), requesting only removal of his fitness report that mentioned the NJP. Without action by this Board, the Navy Personnel Command (NPC) removed the fitness report, but their action was not effected until after Petitioner's FY 02 failure. He now contends that the presence of the report in his record before the FY 02 promotion board caused his failure of selection by that board.

c. In correspondence attached as enclosure (2), the NPC office having cognizance over active duty promotions has commented to the effect that the previously implemented correction of Petitioner's fitness report record substantially improves his competitiveness. Therefore, they recommended that his current request to remove his FY 02 failure of selection be approved, and that he also be granted consideration by a special selection board for the FY 02 Line Lieutenant Commander Selection Board. They further commented that as he made attempts to correct his record only after he had incurred his FY 01 failure of selection, removal of that failure is not warranted.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (2), the Board finds the existence of an injustice warranting removal of Petitioner's failure of selection by the FY 02 Line Lieutenant Commander Selection Board. As he did not request removal of his FY 01 failure or consideration by a special selection board, the Board did not consider whether these remedial actions were warranted. In view of the above, the Board directs the following corrective action:

RECOMMENDATION:

a. That Petitioner's record be corrected by removing his failure of selection by the FY 02 Line Lieutenant Commander Selection Board, leaving in his record his failure of selection by the FY 01 Line Lieutenant Commander Selection Board.

b. That any discharge or other action based in any way on Petitioner's failure of selection before the FY 02 Line Lieutenant Commander Selection Board be cancelled and, if necessary, that related documentation be removed from his record.

c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

d. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder

Jonathan S. Ruskin
JONATHAN S. RUSKIN
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

Robert D. Zsalmán
For W. DEAN PFEIFFER
Executive Director

8436-01



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND
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5420
P801C/0006

15 JAN 2001

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: Assistant for BCNR Matters (PERS-00ZCB)

Subj: REQUEST FOR COMMENTS AND RECOMMENDATION IN CASE OF
[REDACTED] USN [REDACTED]

Ref: (1) PERS-311 memo of 16 May 2001

Encl: (1) BCNR File 08436-01

1. Enclosure (1) is returned, recommending the removal of LT
[REDACTED] FY-02 failure of selection and that he be granted a
special promotion selection board.

2. The removal of the fitness report addressed in ref (a)
substantially improves the promotion competitiveness of LT
[REDACTED] record amongst his peers. As it is reasonable to
consider that the questioned fitness report did negatively
impac [REDACTED] competitiveness before the FY-02 promotion
selection board, recommend the member's failure of selection be
removed and that he be granted a FY-02 Lieutenant Commander
Active Duty Line Special Promotion Selection Board.

3. [REDACTED] made attempts to correct his record only after he
incurred a failure of selection on the FY-01 board and therefore
warrants the removal of his FY-02 failure only.

[REDACTED]

Deputy Director, Active and
Reserve Officer Career
Progression Division